

Remarks

MPEP and CFR Citations

MPEP 821.03 states “[c]laims added by amendment following action by the examiner, MPEP § 818.01, § 818.02(a), to an invention other than previously claimed, should be treated as indicated by 37 CFR 1.145.” 37 CFR 1.145 states “[i]f, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144.” (Emphasis added.)

MPEP 802.01 states “[t]he term “independent” (i.e., **>unrelated<) means that there is no disclosed relationship between the two or more inventions claimed, that is, they are unconnected in design, operation, and effect.” MPEP 802.01 states “[r]elated inventions are distinct if the inventions as claimed are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art).” The newly added claims do not meet the definition of independent since they are related and there is a disclosed relationship between the two or more inventions claimed, that is, they are connected in design, operation, or effect. The newly added claims do not meet the definition of distinct because they cannot be said to meet both criteria where 1) the newly added claims and original claim 1 are not connected in at least one of design, operation, or effect and 2) wherein at least one invention is patentable over the other.

Further, the claims do not meet the criteria of MPEP 806.05(c). For example, the Examiner cannot show that a combination as claimed: (A) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and (B) the subcombination can be shown to have utility either by itself or in another materially different combination. For example, the Examiner has already indicated that claim 1 is not patentable due to novelty or obviousness. Where this is the case, “[t]he inventions are not distinct and a requirement for restriction must not be made or maintained, even if the subcombination has separate utility.” MPEP 806.05(c).

Thus, the newly added claims are 1) not distinct from and independent of an invention previously claimed and are 2) not distinct or independent of an invention previously claimed. Therefore, claims 2-33 should not be restricted under 37 CFR 1.145 or MPEP 821.03.

Applicant amended the claims as allowed by MPEP 714(I)(A), consistent with the Detailed Description portion of the Application, consistent with the meaning of the claim terms in the Application (MPEP 608.0(o)), and in accordance with the Examiner's requirements of the prior Office action. (When examining claims for patentability, claims are interpreted as broadly as is reasonable and consistent with the specification. MPEP 2111.01; See *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004); *In re Thrift*, 298 F.3d 1357, 63 USPQ2d 2002, 2006 (Fed. Cir. 2002).) The claims are directed to snapshot processing, just more narrowly directed than claim 1.

Comments on the MPEP and the Prior Response

The Examiner's Office action (Notice of Non-Responsive Amendment) mailed June 2, 2008, has been reviewed. In view of the following remarks, Applicant respectfully submits that the application is in condition for allowance.

1. The Examiner did not address MPEP 806.05(c) and the remarks made by the Applicants and did not explain why the claims are not properly presented under MPEP 806.05(c). The Examiner specifically did not explain why, where the Examiner has already indicated that claim 1 is not patentable due to novelty or obviousness, the combination as claimed: (A) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and (B) the subcombination can be shown to have utility either by itself or in another materially different combination. Applicants specifically request that the Examiner separately address this point and explain why the claims are not proper under MPEP 806.05(c).

2. Further, the Examiner did not address the citation for MPEP 806.05(c) specifying where the Examiner cannot show that a combination as claimed: (A) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and (B) the subcombination can be shown to have utility either by itself or in another materially different combination, “[t]he inventions are not distinct and a requirement for restriction must not be made or maintained, even if the subcombination has separate utility.” Applicants specifically request that the Examiner separately address this point and explain why

the claims are not proper under MPEP 806.05(c) and why the inventions are distinct under MPEP 806.05(c).

3. The Examiner did not address MPEP 802.01 and did not explain why the claims are deemed to meet the definitions of “distinct” and “independent” under MPEP 802.01. The Examiner did not specify why 1) the newly added claims and original claim 1 are not connected in at least one of design, operation, or effect and 2) wherein at least one invention is patentable over the other. Applicants specifically request that the Examiner separately address this point and explain why the claims meet the definitions of distinct and why the claims meet the definition of independent under MPEP 802.01.

4. The Examiner did not specify how or why the current claims are both distinct from and independent of original claim 1. The Examiner did not specify why the current claims have not been made in accordance with 37 CFR 1.145 and MPEP 821.03. Applicants specifically request that the Examiner separately address this issue.

5. The Examiner did not construe the claims as broadly as reasonably possible and in accordance with the specification. The specification specifically describes snapshot trading, and some of the applicable portions of the specification were reproduced in the prior response. It is unclear how the Examiner can find, based on those reproduced sections, how the current claims are not directed to “snapshot trading” or performing a trade “according to a snapshot view.”

Applicants again point the Examiner to paragraph 56 of the application.

[0056] In one embodiment, each of the traders 108-116 in the trading system 106 is configured to trade using a snapshot trading feature. The snapshot trading enables a trader 108-116 to obtain a current snapshot view of a selected market or markets and to place an order based on the current snapshot view of the market or markets. The snapshot feature enables a trader 108-116 to place an order based on the current and immediate order data, and not data that may be old or not otherwise current. Prior systems performed trades based on serially processed trade data. Therefore, the prior systems do not have a current view of the market.

The traders 108-116 of Figure 1 in paragraph 56 are clearly devices, not people. See, for example, paragraphs 38-40. The devices (the traders 108-116) get a current snapshot view of a market and place an order based on the current and immediate order data, and not data that may

be old or not otherwise current.) Applicants point out the following from paragraph 56: Prior systems performed trades based on serially processed trade data. Therefore, the prior systems do not have a current view of the market.

Again, it is unclear to Applicants how the current claims are not construed as a narrowing amendment to original claim 1. It is unclear to applicants, particularly when reviewing the cited paragraphs 56 and 61-67 how the Examiner has not interpreted the claims as broadly as is reasonable and consistent with the specification, as required by MPEP 2111.01, and why the claims are not allowed by MPEP 714(I)(A), where the claims and claim terms are consistent with the Detailed Description portion of the Application, consistent with the meaning of the claim terms in the Application (MPEP 608.0(o)), and in accordance with the Examiner's requirements of the prior Office action. Applicants request an explanation of this issue, including as addressed below/in the prior response.

6. The Examiner stated that “A ‘snapshot view’ implies that the invention in Group I focuses on the graphical display and provides a user with a summary of the current state of the market.” It is unclear why anything is “implied” by a “snapshot view” or why this would necessarily require or focus on a graphical display. The Examiner’s statement is not in accordance with the specification, including the portions Applicant previously identified and currently identifies. The Examiner has not complied with MPEP 2111.01. Applicant specifically requests the Examiner to respond to this Argument and to explain the basis in the specification where a “‘snapshot view’ implies that the invention in Group I focuses on the graphical display.”

Moreover, the Examiner’s statement that original claim 1 is focused on a graphical display is not consistent with original claim 1. Original claim 1 recited, in part, “a software application configured to perform trades for a market with the trading exchange according to a snapshot view of the market.” Here, the software application is performing trades. Nothing in original claim 1 included generating data or anything else to a graphical display. A graphical display is not mentioned. Nothing in original claim 1 included a user or providing a user with any information. Nothing in original claim 1 “implies” the invention in Group I focused on a graphical display and provided a user with a summary of the current state of the market.

7. Applicants have not changed the focus of the claims. Therefore, Applicants continue to traverse the Examiner's rejection/objection to the claims and request the Examiner to specifically address the portions of the MPEP cited above.

8. Regarding the Examiner's further statement related to claims 2-33 being directed toward multiple species, Applicants traverse that statement.

The Remarks in the prior response are incorporated below and made herein.

Applicants have reinstated claim 1 as new claim 34 and amended it to add "stored in memory of the system and executable on the processor" and change "trades" to "at least one trade."

It is noted that the preamble and first limitation of original claim 1 and new claim 34 are:

"A system for trading, comprising:
a processor configured to connect with a trading exchange; and"

and the preamble of claim 25 is:

"A system for trading in a market with a trading exchange, the system
operable using at least one processor, the system comprising:"

Applicants have included new claims 35 that depend from claim 34. Claim 44 is a method claim corresponding to claim 34. Claims 45 et seq depend from claim 44.

First Office Action Substantive Issues (Office Action Dated March 22, 2007)

Regarding pending claim 34, the Examiner rejected Original claim 1 (now cancelled and reinstated as claim 34) under 35 USC § 112. The software application in claim 34 is specified as being stored in memory of the system and executable on the processor.

The Examiner rejected original claim 1 under 35 USC § 101. The MPEP indicates that if the applicant has asserted that the claimed invention is useful for any particular practical purpose and a person of ordinary skill in the art would consider the assertion credible, the Examiner should not impose a rejection based on lack of utility. See MPEP 2107 (II). Applicants submit that credible assertions of utility were made within the application. Further, the system of claims 1 and 34 produce a useful, concrete, and tangible result by performing at least one trade for a market. Also, the 101 rejection is believed to be overcome by the additional language identified above.

The Examiner rejected 1 under 35 USC § 102 as being anticipated by U.S. Publication 2001/0042040, to Keith. As indicated by the Examiner's prior Notices of Non-Responsive Amendments, the Examiner has construed the phrase "to perform at least one trade for a market with the trading exchange according to a snapshot view of the market" to display data to a graphical display and, therefore, cited a reference for that proposition. As discussed at length above, "to perform at least one trade for a market with the trading exchange according to a snapshot view of the market" does not mean displaying data to a graphical display. Therefore, the Examiner did not interpret the claims as broadly as is reasonable and consistent with the specification as required by MPEP 2111.01. See *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004); *In re Thrift*, 298 F.3d 1357, 63 USPQ2d 2002, 2006 (Fed. Cir. 2002).)

The Examiner cited paragraphs 45 and 445 of Keith. Paragraph 45 states:

Referring now to the drawings, and in particular to FIG. 1, there is illustrated a block diagram showing the components used with the present methodology. System 5 is a general purpose computer or network of computers programmed in accordance with the present invention and functions as a platform for allowing electronic liquidity finder (ELF) programs and umpire programs to interact. The platform of system 5 embodies a protocol for standardizing market trading methodologies, order representation and processing, and data formats. System 5 provides platform services 60 to the ELFs and umpires active within system 5. Platform services 60 includes, among other things, linked order execution manager 61, platform status monitor 62, contra-party preference updating 63, system status board 64C, market status board 65, broadcast services 66 and stop order manager 67.

Paragraph 45 does not disclose a trading exchange. Paragraph 45 does not disclose a processor to connect to a trading exchange. Paragraph 45 does not disclose a software application stored in memory of the system and executable on the processor to perform at least one trade for a market with the trading exchange according to a snapshot view of the market.

Paragraph 445 states:

FIG. 41 is a flowchart showing unsolicited umpire traffic processing. Unsolicited traffic includes price broadcast streams from umpires, explicit addressed messages via umpire, announcements such as new security definitions or services announcements sent from appropriate umpires to subscribers, and status messages such as "umpire up, down, hours." Unsolicited traffic is sent to order room 70 but shown as message types. At step 901, oE 10 filters any traffic to which oE 10 is not entitled. For example, oE 10 is only entitled to the price broadcast stream for any umpires with which oE 10 is registered. At registration time, the umpire provides oE 10 with a certificate that controls the data from this

umpire to which oE 10 is entitled. The certificate thus obtained may, in fact, further restrict oE 10 to a subset of the data transmission by the umpire. oE 10 classifies the unsolicited traffic as either market data, order cancellations or other traffic. If the traffic is market data, oE 10 proceeds to step 905. If the traffic is an order cancellation, for example, a cancellation by an umpire about to enter fast symbol mode, oE 10 proceeds to step 903 and updates its order control table, then proceeds to step 915. If the traffic was other unsolicited traffic, at step 915, oE 10 forwards the unsolicited traffic to the order room. At step 905, oE 10 tests whether the market data is for a watched instrument. If the traffic is watched instrument traffic, at step 915, oE 10 forwards the unsolicited traffic to order room 70. An example of watched instrument traffic is all changes the oU transmits related to a particular instrument or set of instruments. The watched instrument traffic, in this embodiment, keeps the order room's snapshot of the market in an instrument up-to-date. The snapshot may be used by the order room to determine when market conditions are right for triggering actions such as linked order executions. Another example of unsolicited traffic that is forwarded to order room 70 is a message from an order umpire that a new synthetic instrument has been created. If the market data is not for a watched instrument, or after appropriate traffic has been forwarded to order room 70, processing is complete.

Paragraph 445 does not disclose a trading exchange. Paragraph 445 does not disclose a processor to connect to a trading exchange.

Paragraph 445 discloses an “order room's snapshot of the market.” Neither paragraph 445 nor any other portion of Keith disclose what the “order room's snapshot” is or what is meant by “the order room's snapshot of the market in an instrument up-to-date.” Further, the Examiner has, apparently, already construed a snapshot to be a graphical display, which does not meet the claimed limitation. Paragraph 445 does not disclose a software application stored in memory of the system and executable on the processor to perform at least one trade for a market with the trading exchange according to a snapshot view of the market.

Claim 44 is patentable for the same reasons claim 34 is patentable.

Since independent claims 34 and 44 are believed to be patentable, the claims depending therefrom also are believed to be patentable since they include the limitations of the base claims.

Regarding claims 35, 45, and 54, Keith does not disclose that the snapshot view of the market comprises current market information. Regarding claim 59, Keith does not disclose that the snapshot view of the market comprises information from a most recently received message. Regarding claim 67, Keith does not disclose that the snapshot view of the market comprises order data from a most recently received message.

Regarding claim 35, Keith does not disclose any system with the claimed message processor. Keith does not disclose any system to receive a plurality of second messages while processing the first message, each second message comprising order price change information. Keith does not disclose any system to determine if an update flag is set, and, if set, not process each order price change information of the plurality of second messages and transmit a third message requesting the current market information from the trading exchange. Keith does not disclose a snapshot trade manager to monitor the message processor and to set the update flag upon the message processor receiving a first one of the plurality of second messages while processing the first message.

Regarding claim 45, Keith does not disclose any method with the claimed message processing. Keith does not disclose any method to set an update flag upon receiving a first one of the plurality of second messages while processing the first message. Keith does not disclose receiving a plurality of second messages at the trading system while processing the first message, the plurality of second messages each comprising order price change information. Keith does not disclose setting an update flag upon receiving a first one of the plurality of second messages while processing the first message. Keith does not disclose upon at least approximately completing processing the first message, determining if the update flag is set and, if set, skipping and not processing each order price change information of the plurality of second messages at the trading system and, if set, transmitting a third message from the trading system requesting the current market information from the exchange system. Keith does not disclose upon at least approximately completing processing the first message and after determining if the update flag is set, receiving a fourth message at the trading system comprising the current market information.

Regarding claim 54, Keith does not disclose receiving at least one second message at the trading system while processing the first message, the at least one second message comprising at least one order price change information. Keith does not disclose upon at least approximately completing processing the first message, skipping and not processing the at least one order price change information of the at least one second message at the trading system and transmitting a third message from the trading system requesting the current market information from the exchange system. Keith does not disclose receiving a fourth message at the trading system comprising the current market information. Keith does not disclose processing the fourth

message at the trading system and determining a price for the order based on the current market information.

Regarding claim 59, Keith does not disclose receiving a plurality of other electronic messages from the trading exchange at the trading system while processing the first electronic message. Keith does not disclose upon at least approximately completing processing the first electronic message, skipping, and not processing, a plurality of the received messages and processing the most recently received message from the plurality of received messages at the trading system. Keith does not disclose electronically processing an order for the at least one trade at the trading system based upon the information from the most recently received message.

Regarding claim 67, Keith does not disclose receiving a plurality of electronic messages from the trading exchange at the trading system while processing the order. Keith does not disclose upon at least approximately completing processing the order, skipping, and not processing, a first plurality of the received messages and processing the most recently received message from the plurality of received messages at the trading system. Keith does not disclose electronically processing another order at the trading system based upon the order data from the most recently received message, wherein the at least one trade comprises the other order.

Claims depending from claims 35, 45, 54, 59, and 67 are believed to be patentable because claims 35, 45, 54, 59, and 67 are believed to be patentable and the dependent claims include all of the limitations of the base claims and the intervening claims 35, 45, 54, 59, and 67.

All reasons for patentability of the independent and dependent claims have not necessarily been discussed herein. The lack of a discussion of additional patentable limitations of the independent and dependent claims should not be construed to mean that there are not additional patentable limitations in those claims. No implication or construction should be made therefore.

Claims 2-33 are believed to be patentable for the same reasons as claims 34-67. In particular, claims 2, 11, 16, 24, and 25 are believed to be patentable for the same or similar reasons as claims 35, 45, 54, 59, and 67. It is further believed that Applicants have shown that claims 2-33 correspond in scope to a narrowing of claim 1. As such, the final restriction as to claims 2-33 respectfully is requested to be withdrawn.

Previous Remarks Incorporated Herein

The Examiner issued a Notice of Non-Responsive Amendment. The Examiner found that newly submitted claims 2-33 are directed to an invention that is independent or distinct from the invention originally claimed. The Examiner found original claim 1 was directed toward trading according to a snapshot view of the market, and newly presented claims 2-33 are presented toward processing messages within a trading system. The Examiner found that Groups I and II are related as subcombinations usable together, and Group II does not require use of a snapshot view in order to complete a trade. The Examiner found that the “snapshot trade manager” of claims 25, 32, and 33 only monitors, deletes, and stores messages and does not utilize a snapshot view of the market, which was the focus of original claim 1.

The Examiner found that invention of claim 1 was constructively elected by original presentation for prosecution on the merits and withdrew claims 2-33 from consideration as being directed to a non-elected invention.

Applicant thanks the Examiner for the Office action. However, under the Examiner’s theory, any amendment to the claims would result in the claims being directed to an invention that is independent or distinct and that could be related as subcombinations usable together. Applicant traverses the Examiner’s requirement and respectfully requests that the claims be examined.

Original claim 1 was directed to snapshot processing. Newly submitted claims 2-33 also are directed to snapshot processing, just more narrowly directed, and in accordance with the description of snapshot processing disclosed in the application. For example, the Application describes a process of and system for performing trades for a market with a trading exchange according to a snapshot of the market.

See, for example, the Application, paragraphs 56 and 61-65:

“[0061] Figure 3 depicts an example of a snapshot trading method of the present trading system. The trading system processes a message from the trading exchange 104. When the trading system completes the processing, the trading system will process a message received approximately when the processing was completed. The trading system may be configured to process a message received immediately after processing is completed on the prior message, received at the same time processing is completed on the prior message, or received just prior to the completion of the processing of the prior message. In one embodiment, the trading system is

configured to process a next message received at or immediately after the prior message processing is completed.

[0062] Accordingly, the trading system may skip messages received while it is processing another message. In one embodiment, if a message is received from the trading exchange 104 while the trading system 106 is processing a prior message, the trading system trips an update flag. In one example of this embodiment, the trading system does not process the order data in the message. In another example, the trading system dumps the message and its contents while tripping the update flag or after the update flag is tripped.

[0063] When the trading system has completed processing the prior message, the trading system determines if the update flag has been tripped. If the update flag has been tripped, the trading system synchronizes the order data for the selected market or markets. In one example of this embodiment, the trading system requests the current order data from the trading exchange 104 if the update flag has been tripped. The trading system processes the response from the trading exchange 104 and determines whether another order is to be placed with the trading exchange 104 or if another action is to be taken.

[0064] In the embodiment of Figure 3, the trading system 106 receives ten messages from the trading exchange 104, one each second. In this example, two seconds are required by the trading system 106 to process each message. In other examples, other time frames, either greater or lesser, may be required to process a message. Additionally, other units of time measurement may be used.

[0065] In this example, the first message 304 is received and processed 306 at time unit one. The second message is received but not processed. The trading system 106 takes two seconds to process the first message. The trading system processes the next message received after the processing is complete for the first message. In this example, the next message is the third message received at the third second. The trading system takes two seconds to process the third message. Therefore, the trading system receives the fourth message, trips the update flag, but does not process the fourth message. When processing is complete for the third message, the trading system processes the next received message, which is the fifth message. This process continues until processing is complete.” (Emphasis added.)

See also, Application, paragraphs 66-67:

“[0066] In another example, the trading system receives a first change notification in market B and will attempt to adjust the price of the trading system's bid in market A from \$9.00 to \$10.00 in response to the change in market B's best price from \$10.00 to \$11.00. If the trading system 106 required one second to post the change in price for the bid in market A, and the changes in market B are occurring at a rate of three per second, then the price in market B at the end of the first cycle is at \$13.00. The trading system notes, but does not respond to the change in market B from \$11.00 to \$12.00 to \$13.00. At the end of the trade cycle, the trading system 106 noted that a change had occurred during its trade cycle, and will tend to post a \$12.00 bid in market A since the price in market B is currently \$13.00. The trading system 106 requires another second to post the \$12.00 bid in market A. In this time, the price in market B has changed from \$13.00 to \$14.00 to \$15.00 to \$16.00. The trading system 106 finishes its trade cycle and notes that the best price in market B is now at \$16.00. The trading system 106 responds by posting another change of \$15.00 in the market A bid.

[0067] It will be appreciated that the trading system 106 operates more quickly, in real time, by operating with snapshot trading and not operating with serial responses. In this manner, the trading system 106 operates more like a human trader.” (Emphasis added.)

See also Application, paragraphs 112-118. Other examples exist and can be identified upon request of the Examiner.

Claim 25 corresponds to an amendment of claim 1. The other independent claims are method claims corresponding to the subject matter of claim 25.

MPEP 821.03 states “[c]laims added by amendment following action by the examiner, MPEP § 818.01, § 818.02(a), to an invention other than previously claimed, should be treated as indicated by 37 CFR 1.145.” 37 CFR 1.145 states “[i]f, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§ 1.143 and 1.144.” (Emphasis added.)

MPEP 802.01 states “[t]he term “independent” (i.e., **>unrelated<) means that there is no disclosed relationship between the two or more inventions claimed, that is, they are unconnected in design, operation, and effect.” MPEP 802.01 states “[r]elated inventions are distinct if the inventions as claimed are not connected in at least one of design, operation, or

effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art).” The newly added claims do not meet the definition of independent since they are related and there is a disclosed relationship between the two or more inventions claimed, that is, they are connected in design, operation, or effect. The newly added claims do not meet the definition of distinct because they cannot be said to meet both criteria where 1) the newly added claims and original claim 1 are not connected in at least one of design, operation, or effect and 2) wherein at least one invention is patentable over the other.

Further, the claims do not meet the criteria of MPEP 806.05(c). For example, the Examiner cannot show that a combination as claimed: (A) does not require the particulars of the subcombination as claimed for patentability (to show novelty and unobviousness), and (B) the subcombination can be shown to have utility either by itself or in another materially different combination. For example, the Examiner has already indicated that claim 1 is not patentable due to novelty or obviousness. Where this is the case, “[t]he inventions are not distinct and a requirement for restriction must not be made or maintained, even if the subcombination has separate utility.” MPEP 806.05(c).

Thus, the newly added claims are 1) not distinct from and independent of an invention previously claimed and are 2) not distinct or independent of an invention previously claimed. Therefore, claims 2-33 should not be restricted under 37 CFR 1.145 or MPEP 821.03.

Applicant amended the claims as allowed by MPEP 714(I)(A), consistent with the Detailed Description portion of the Application, consistent with the meaning of the claim terms in the Application (MPEP 608.0(o)), and in accordance with the Examiner’s requirements of the prior Office action. (When examining claims for patentability, claims are interpreted as broadly as is reasonable and consistent with the specification. MPEP 2111.01; See *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004); *In re Thrift*, 298 F.3d 1357, 63 USPQ2d 2002, 2006 (Fed. Cir. 2002).) The claims are directed to snapshot processing, just more narrowly directed than claim 1.

Applicant traverses the Examiner’s characterization of the newly added claims as being independent or distinct, as being subject to restriction, and as being drawn to a non-elected invention. Applicant traverses the Examiner’s characterization of the claims as being subject to a different class/subclass. Finally, Applicant traverses the Examiner’s Office action indicating

that the newly added claims are not an amended form allowable (i.e. in form for prosecution) under MPEP 714(I)(A).

Reconsideration respectfully is requested.

All reasons for patentability of the independent and dependent claims have not necessarily been discussed herein. The lack of a discussion of additional patentable limitations of the independent and dependent claims should not be construed to mean that there are not additional patentable limitations in those claims. No implication or construction should be made therefore.

Applicant has no further remarks with regard to any references cited by the Examiner and made of record, whether or not acted upon by the Examiner in the action's rejections, even if specifically identified in the action or any other paper or written or verbal communication. No implication or construction should be drawn about any review of the same by Applicant or Applicant's attorney.

Based on the foregoing, it is submitted that the Applicant's invention as defined by the claims is patentable over the references of record. Issuance of a Notice of Allowance is solicited.

Applicant's attorney welcomes the opportunity to discuss the case with the Examiner in the event that there are any questions or comments regarding the response or the application.

This is intended to be a complete response to the Examiner's Office action (Notice of Non-Responsive Amendment) mailed on June 2, 2008.

Respectfully Submitted,

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